

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FRIENDS OF THE WILD SWAN,)	
et al.,)	No. 13-cv-57-DWM
)	
Plaintiffs,)	DECLARATION OF
v.)	MICHAEL THABAULT
)	
DANIEL ASHE, U.S. FISH &)	
WILDLIFE SERVICE, et al.,)	
)	
Defendants.)	
_____)	

Declaration of Michael Thabault

1. I am the Assistant Regional Director for Ecological Services in Region 6 of the U.S. Fish and Wildlife Service ("Service"), an agency of the Department of the Interior. My office is located in Lakewood, Colorado. In my capacity as Assistant Regional Director, I am responsible to the Regional Director of Region 6 of the Service for the Region's administration of the Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531-1544, which includes recovery planning for species that are listed under the ESA.
2. The Service intends to develop a recovery plan for the Contiguous United States distinct population segment ("DPS") of the Canada lynx. However, the Service is unable to initiate that recovery planning in fiscal year 2014 due to lack of appropriations and available staff. This Declaration explains the budgetary and staff limitations regarding recovery planning for the lynx.
3. Although we are unable to initiate recovery planning for the lynx DPS in fiscal year 2014, the Service anticipates doing so in fiscal year 2015. The Service also anticipates completing a recovery plan by January 15, 2018, barring unforeseen circumstances or a determination that a recovery plan will not promote the conservation of the lynx DPS. This Declaration explains our recovery planning process and why recovery planning for the

lynx will take several years to complete.

Appropriations for Canada Lynx Recovery Planning

4. After Congress finalizes appropriations, Endangered Species Accounts are allocated to the Service's regions using a formula. The formula considers the number of species for which a Region serves as lead, the taxonomy of the species (e.g., whether a species is a vertebrate, non-vertebrate or plant), and the complexity of conservation challenges associated with the species. Once a regional office receives an allocation for a given sub-activity or account (e.g., for species recovery), that region distributes funding to support the Region's mission. In Region 6 – the lead region for the Canada lynx – the recovery sub-activity account is allocated to support recovery implementation and recovery planning. For example, these funds support: grizzly bear management and monitoring; captive rearing, reintroduction and management for the critically endangered black-footed ferret; post-delisting monitoring of the gray wolf; and attempts to prevent extinction and work towards recovery of ten bird and fish species that rely on the severely altered Colorado, Platte, and Virgin Rivers ecosystems. In total, our six largest recovery programs – which address on-the-ground management – are allocated over 80 percent of our regional recovery budget. Most of these are longstanding recovery implementation commitments, alteration of which would cause significant biological impacts to these high priority recovery efforts. There is no specific line-item in the recovery sub-activity account for recovery planning. Regions must balance competing needs for recovery planning and recovery implementation and do so from the base allocation received from Service Headquarters.
5. The Canada lynx has a Recovery Priority Number (RPN) of 15 of a scale of 1C (highest) to 18 (lowest). This RPN indicates that the listing is for a population, that the DPS faces a low degree of threat, that the species has a high recovery potential, and that its recovery is not significantly negatively impacted by economic development activities. This RPN is revisited annually, but has not changed since listing.

Staffing for Canada Lynx Recovery Planning

6. The lead Field Office for the Canada lynx is the Montana Field Office in Helena, Montana. This office houses one biologist who serves as lead for the Canada lynx. This biologist will be responsible for coordinating the

development of the Canada lynx recovery plan. This biologist is now completing the revised critical habitat rule for the Canada lynx (due on Sept. 1, 2014, pursuant to the Court's order in *Alliance for Wild Rockies v. Lyder*, 728 F. Supp. 2d 1126, 1127 (D. Mont. 2010)). While other Service staff in other offices support Canada lynx work (e.g., through Section 7 consultations) and will contribute to the recovery planning effort (e.g., providing local or regional information on threats and site specific management actions), these employees lack the in-depth knowledge required to lead and coordinate the recovery planning effort.

The Process for Developing a Recovery Plan for Canada Lynx

7. Because Canada lynx populations occur on Federal, State, Tribal and private lands from Maine to Washington State and south along the Rocky Mountains, development and completion of a recovery plan for the lynx DPS will require (1) significant intra-Service coordination, (2) extensive participation by other Federal agencies, 14 States, and numerous Tribes, and (3) critical input from scientific experts and the public.
8. Section 4(f) of the ESA requires that a recovery plan include, to the maximum extent practicable, (1) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species; (2) objective, measureable criteria which, when met, would result in a determination that the species can be removed from the list of threatened and endangered species and (3) the estimates of the time required and cost to carry out measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal. 16 U.S.C. § 1536(f)(1).
9. When drafting a recovery plan, the Service can rely in part on the 2005 *Recovery Outline for the Contiguous United States Distinct Population Segment of the Canada Lynx*. However, the Service will require significant, additional detail to meet the requirements for recovery plans under section 4(f) and related Service policies. In addition, significant scientific information concerning the lynx DPS has accumulated since 2005. This information includes an August, 2013 revision to the 2000 Lynx Conservation Assessment and Strategy, changes in U.S. Forest Service ("USFS") forest management for the purpose of conserving lynx (including the Northern and Southern Rockies Lynx Management Direction and formal amendments to 18 Forest Plans incorporating the standards set forth therein),

changes in mapping regarding the quality and extent of lynx habitat, the upcoming final critical habitat designation for the lynx, and new information regarding the potential effects of climate change on the species. The Service will also complete its Five-Year Review for the Canada lynx in Fiscal Year 2015 pursuant to 16 U.S.C. § 1533(c)(2)(A) of the ESA. This review will inform the Service's recovery planning for the lynx.

10. The Service makes draft recovery plans available for public review and comment via notice in the Federal Register. 16 U.S.C. § 1533(f)(4) of the ESA. The Service also concurrently seeks peer review on draft recovery plans from at least three outside experts, as required by our Interagency Cooperative Policy for Peer Review in Endangered Species Activities. *See* 59 Fed Reg. 34270. Public comment and peer review on draft recovery plans require time so that review and comment is meaningful and is appropriately incorporated into a final recovery plan.
11. Because of the lynx's extensive range, development of a recovery plan requires careful and comprehensive coordination among many Service offices. The Service is divided into 8 geographic regions, plus the Washington Headquarters Office. Each region includes a Regional Office and numerous Field Offices. Four regions within the Service are involved with Canada lynx issues. These offices include: Region 1 (located in Lacey, Washington; Boise, Idaho; Spokane, Washington; and Portland, Oregon), Region 3 (located in Bloomington, Minnesota; Green Bay, Wisconsin; and East Lansing, Michigan), Region 5 (located in Orono, Maine; Concord, New Hampshire; and Cortland, New York) and Region 6 (located in Helena, Montana; Cheyenne, Wyoming; West Valley City, Utah; and Lakewood and Grand Junction, Colorado). When listed species occur in more than one Region, the lead Region (here, Region 6) is responsible for ensuring coordination with the remaining regions. Non-lead regions are responsible for coordination within their Region and for providing requested information to the lead Region.
12. The Service's Montana Field Office, under the supervision of the Region 6 office, will likely lead Canada lynx recovery planning due to its involvement with the listing and critical habitat determinations for the species. The lead Service biologist in Montana will coordinate all recovery planning efforts with Service biologists in the remaining three Regions and various field offices listed above.

13. Because of the lynx's range and the substantial overlap of lynx habitat with federal lands, Service staff must engage staff from the USFS, the Bureau of Land Management, the National Park Service, and representatives of the States and Tribes within the DPS's range. Coordination with USFS is critical because that agency manages the majority of lands occupied by lynx and possesses the most detailed information regarding mapped potential habitat. A recovery plan also will require close coordination with State and Tribal wildlife agencies, and with those from adjacent Canadian provinces.
14. The Service has not determined whether it will appoint a recovery team for the Canada lynx recovery effort. If a recovery team is established, the Service will identify experts in lynx biology and other experts with forest management and forest ecology experience. If a recovery team is established, the Region 6 Regional Director will issue appointment letters to those individuals.
15. As outlined in National guidance, the Service anticipates that a typical recovery plan requires approximately 30 months from beginning of work until completion. However, the "typical" species occurs in small numbers and covers limited geographic areas. For example, more than half of the listed species in Region 6 are plants which are typically narrow endemics, limited to only a few occurrences (e.g., Clay phacelia, which is limited to four sites in Spanish Fork Canyon in Utah County, Utah). Recovery plans associated with these species are relatively simple compared to that for the Canada Lynx, which will involve half of the Service's regions and 15 Service field offices, four Federal agencies, up to 14 States, and numerous Tribes. We also anticipate that recovery planning will be especially challenging and complex as the Service assesses both the effects of – and responses to – climate change. The scale, scope and complexity of this plan factor in our proposed timeline.
16. Development of a recovery plan is expected to proceed in the following phases and timeline: development of the draft plan (approximately eighteen months for planning, coordination with species experts, partners, resource managers, and others; and writing, reviewing and editing); clearance of the draft plan (approximately five months from submission to regional office to publication of the Federal Register notice of availability); public and peer review (approximately two months); revision in response to public and peer review comments (approximately seven months); and clearance of the final plan (approximately five months from submission to regional office to

publication of the Federal Register notice of availability). We anticipate that the planning process would start in late 2014.

17. This timeline would make Lynx one of the Region's highest priorities for recovery planning. This timeline would prioritize Lynx ahead of many other Region 6 species with higher recovery priority numbers (the system typically used to decide priority for recovery planning), including some that have also been listed longer than Lynx.

This Declaration is made under 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on June 9, 2014 in Lakewood, CO.



Michael Thabault